

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
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Case No. S-274-C

PETITION OF SUBURBAN HOSPITAL, INC.

OPINION OF THE BOARD

(Hearing held July 25, 2001)

(Effective date of Opinion: September 19, 2001)

Case No. S-274-C is a Petition for a Special Exception Modification to allow for the construction and installation of certain life safety and code related improvements to an existing hospital facility on 7.1 acres of land located at 8600 Old Georgetown Road, Bethesda, in the R-60 zone. The Petition is filed pursuant to Sections 59-C-1.31 (d) and 59-G-2.31 of the Zoning Ordinance of Montgomery County, Maryland, *Montgomery County Code, 1994, as amended* (the "Zoning Ordinance").

Decision of the Board: Special exception modification
 GRANTED, subject
 to the conditions enumerated below.

A public hearing was held on July 25, 2001 pursuant to Section 59-A-4.11 (a) of the Zoning Ordinance.

John J. Delaney and Scott C. Wallace, of Linowes and Blocher LLP, appeared on behalf of Suburban Hospital, Inc. (the "Applicant"). Messrs. Delaney and Wallace called four witnesses in support of the application; including experts in electrical engineering, architecture, and acoustics and the Acting Chief Executive Officer of the Applicant.

Normal Knopf, of Knopf and Brown, appeared on behalf of the Huntington Terrace Citizens' Association ("HTCA"). Several residents and officers of HTCA from the neighborhood testified in opposition to the Application, including Richard Hutchinson, Ann Dorough, and Jerome Collins.

Martin Klauber, the People's Counsel of Montgomery County, Maryland, also participated in the proceedings. Mr. Klauber recommended that the Board approve the requested modifications, subject to the conditions enumerated below.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Board makes the following findings of fact:

1. The subject property (the "Property"), also known as Lot 15 and Lot 8A, Block 15 of the Huntington Terrace Subdivision, is comprised of 7.1 acres and is located at 8600 Old Georgetown Road. It is irregular in shape and has approximately 495 feet of frontage along Old Georgetown Road and a depth of approximately 720 feet. Improvements consist of a hospital building and associated surface parking (the "Hospital"). The Applicant also leases off-site parking spaces for employees and provides shuttle busses to and from the off-site parking. The Hospital has been located on the Property since the 1940's.
2. The Property is zoned R-60.
3. The Property is subject to Special Exception S-274 (the "Special Exception"), originally approved in 1955, which permits the use of the Property as a hospital. The Special Exception has been modified over a dozen times in the past.
4. The Hospital serves the acute medical care needs of the residents of Montgomery County, and particularly those residents in the lower portion of the County. The Hospital also serves as the State Designated Trauma Center for Montgomery County.
5. The Applicant requests a Modification to the existing Special Exception to:
 - (a) construct an expansion of the existing underground mechanical plant located near the north edge of the Property, adjacent to Lincoln Street, to accommodate new chiller equipment and emergency generators with a capacity of 800 kilowatts each;
 - (b) replace an existing 1100 ton cooling tower associated with the chillers on the roof of the north wing of the Hospital with two 750 ton cooling towers;
 - (c) construct a trauma elevator along the exterior face of the west wing of the Hospital; and
 - (d) install a new air-handling unit with a capacity of 70,000 cubic feet per minute on the roof of the west wing of the Hospital and an associated airshaft along the exterior of the west wing.

Collectively, the four components of the Special Exception Modification are referred to as the "Life Safety and Code Improvements" because they are required to replace aging equipment, which is operating at capacity, and to satisfy certain State and Federal healthcare code requirements for hospital mechanical equipment systems and/or to improve the operations of the Hospital's physical plant. The Life Safety and Code Improvements are shown on Exhibit 4(b).

6. The surrounding properties contain residential and institutional land uses. Lots 1-5, 6A, 7A, 9A and 10-13, Block 15 of the Huntington Terrace Subdivision adjoin the Property to the west, north and south. These lots are owned by the Applicant and are used for residential purposes. The Applicant also owns Lots 13-17 and 32, Block 8 of the Huntington Terrace Subdivision, confronting the Property to the north across Lincoln Street. Lot 32, Block 8 is used by the Applicant for administrative offices and additional parking. Confronting the Property to the east, across Old Georgetown Road, is another large institutional use, the campus of the National Institutes of Health. Confronting the Property to the west, across Grant Street, is a single-family residential neighborhood in the R-60 Zone.

7. The Property is subject to the 1990 Approved and Adopted Bethesda Chevy-Chase Master Plan (the "Master Plan") (Exhibit 13(a)). The Master Plan, at page 58, recognizes the use of the Property as a hospital pursuant to the Special Exception.

8. The Special Exception Modification is in compliance with all of the applicable development standards for hospitals in the R-60 zone. (Site Plan, Exhibit 4(b)).

9. The Special Exception Modification will not result in an increase in the number of employees on the Property.

10. The Special Exception Modification is exempt from the Forest Conservation Law (Waiver No. 4-01339E). The Life Safety and Code Improvements will not result in the cumulative clearing of more than 5000 additional square feet of forest. The expansion of the underground mechanical equipment plant will require the clearing of approximately 100 square feet of landscaping, which will be replaced following the completion of the construction.

11. Several residents from the neighborhood around the Property testified that the existing noise levels around their properties were a concern to them.

12. Mr. Scott Harvey, the Applicant's expert in acoustics testified that the current operation of the Hospital meets the standards set forth in Section 31B-5(a) of the Montgomery County Code (the "Noise Control Ordinance"). In particular, the Noise Control Ordinance provides that the maximum noise level permitted in a residential noise receiving area, which is generally defined as land classified in a residential zone in the Zoning Ordinance, is 55 decibels of sound ("dBA") during the nighttime and 65 dBA during the daytime.

13. Mr. Robert Banas, the Applicant's expert in electrical engineering, testified that the new cooling towers are designed with state-of-the-art noise attenuation features, including super low sound blades and water silencers and that the new cooling towers will operate more quietly than the existing cooling tower that they will replace. Further, Mr. Harvey explained that in response to the neighbors concerns regarding noise, the Applicant intended to install a noise control barrier on three sides of the cooling tower grid as depicted on Exhibit "26". The noise control barrier will be approximately 20 feet in height and will include noise absorption treatments consisting of two-inch thick

fiberglass panels. Mr. Harvey concluded that the noise insulation panels will reduce the noise level from the replacement cooling towers by an additional 3-7 dBA. (Noise Control Barrier, Exhibit 26). Thus, the replacement cooling towers will generate noise at a level of 45-50 dBA (daytime and nighttime) at the residential receiving areas abutting and confronting the Property along McKinley Street, Grant Street and Lincoln Street as shown in Exhibit 25. Accordingly, the noise levels from the cooling towers will be below the maximum permitted noise levels in the Noise Control Ordinance of 55 dBA (nighttime) and 65 dBA (daytime) at the nearest residential receiving areas. Further, these noise levels will be below the ambient noise level of 54 dBA for the area.

14. Mr. Harvey also testified that the replacement air handling unit will produce a noise level of less than 40 dBA at the nearest residential receiving area as shown in Exhibit 25, which is also below the maximum noise levels allowed under the Noise Control Ordinance.

15. The expansion of the underground mechanical plant will result in the temporary loss of approximately 52 employee parking spaces on site. The Applicant will be leasing 100 off-site spaces for affected employees. (Use Agreement, Exhibit 3(a)).

16. The physical characteristics of the Special Exception Modification, such as the noise generated by the rooftop mechanical equipment will not create any objectionable noise, odor, glare, or other adverse effects.

17. The Special Exception Modification will not, when evaluated in conjunction with existing and approved special exceptions in neighboring one-family residential areas, adversely affect or alter the predominately residential nature of these areas.

18. The MNCPPC Staff reviewed plans for the Special Exception Modification and recommended approval, subject to the condition that the Applicant be bound to comply with all submitted statements and plans. (MNCPPC Staff Recommendation, Exhibit 21 (the "Staff Report").)

19. The Board adopts and incorporates by reference the findings contained in the Staff Report.

20. The Board finds the testimony and evidence given in support of the Special Exception Modification to be credible and persuasive.

CONCLUSIONS OF LAW: GENERAL CONDITIONS

Based upon the above-listed Findings of Fact and testimony and evidence of record, the Board concludes that the Special Exception Modification complies with the General Conditions for granting special exceptions, as set forth in Section 59-G-1.2 of the Zoning Ordinance. Specifically, the Board concludes as follows:

A. Standard for Evaluation (§ 59-G-1.2.1)

A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

The physical and operational characteristics of the Special Exception Modification relating to the Life Safety and Code Improvements are reasonable and, whether viewed as inherent or non-inherent, will cause no adverse effects on nearby properties and the surrounding neighborhoods. In particular, noise levels from the cooling towers and air handling units will be attenuated by both a noise control barrier system for the cooling towers and by the distance of this equipment from the nearest residential receiving areas. Further, the temporary loss of employee parking spaces on-site will be adequately mitigated by the lease of off-site employee parking spaces. Also, exterior additions for the trauma elevator and airshaft will be architecturally compatible with the existing facade of the Hospital. (Exhibit 10, Parking and Landscaping Impact Statement). Finally, any landscaping disturbed during construction of the Life Safety and Code Improvements will be restored once construction is completed.

B. General Conditions (§ 59-G-1.21)

A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.*

Section 59-C-1.3 (d) of the Zoning Ordinance permits hospitals by special exception in the R-60 Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

The Special Exception use, as proposed to be modified, will continue to be in compliance with the standards and requirements set forth for the use in Division 59-G-2, specifically § 59-G-2.31, "Hospitals" as more fully detailed in the Specific Conditions section below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Bethesda Chevy Chase Master Plan, approved and adopted in April 1990, shows the Hospital as an existing use pursuant to the Special Exception. (Master Plan, Exhibit 13(a) at p. 58). The Special Exception Modification will allow for the Hospital to meet its recognized and designated role as a community serving use, including the State Designated Trauma Center for Montgomery County.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

The evidence shows that the Life Safety and Code Improvements will not increase the intensity or character of Hospital activity, traffic or parking conditions. In particular, with regard to noise from mechanical equipment on the roof of the buildings, the evidence shows that the replacement air-cooling towers will operate at lower levels of noise than the existing air cooling towers that will be replaced. The Hospital will be in harmony with the surrounding neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*
- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The evidence demonstrates that the Special Exception Modification will cause no adverse effects upon surrounding properties, nor will it cause objectionable noise, odors, dust, illumination, or physical activity on or around the Property. In particular, the noise levels of the new rooftop mechanical equipment, including the air handling units and cooling towers, are within County standards for residential receiving areas as set forth in the Noise Control Ordinance and will operate more quietly than the cooling tower that

they will replace. The new cooling towers are designed with state-of-the-art noise attenuation features, including super low sound blades and water silencers. Further, the Applicant will install a noise control barrier on three sides of the cooling tower grid as depicted on Exhibit 26 that will reduce the noise level from the replacement cooling towers by an additional 3-7 dBA. Finally, the Special Exception Modification will not intensify physical activity on the Property.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with recommendations of a master or sector plan do not alter the nature of an area.*

The Hospital already operates as an approved Special Exception. Accordingly, the Special Exception Modification will not increase the number of special exceptions in the area or alter the predominant residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Life Safety and Code Improvements will allow the Hospital to continue to provide acute and emergency medical care to the residents of Montgomery County, thereby promoting the health, safety, security morals and general welfare of the residents, visitors and workers in the area of the Property.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Adequate police, fire and other public services and facilities are located nearby, and currently serve the Hospital. These services and facilities will not be affected by the Life Safety and Code Improvements.

D. Specific Conditions (§ 59-G-2.31)

A hospital or sanitarium building may be allowed, upon a finding by the board that such use will not constitute a nuisance because of traffic, noise or number of patients or persons being cared for; that such use will not affect adversely the present character or future development of the surrounding residential community; and if the lot, parcel or tract of land on which the buildings to be used by such institutions are located conforms to the following minimum requirements; except, that in the C-2 and C-O zones, the minimum area and frontage requirements shall not apply:

- (1) **Minimum area.** *Total area, 5 acres.*

The Property comprises approximately 7.1 acres. (Site Plan, Exhibit 4(b)).

- (2) **Minimum frontage.** *Frontage, 200 feet.*

Frontage along Old Georgetown Road is approximately 495 feet. (Existing Site Plan. (Site Plan, Exhibit 4(b))).

- (3) **Setback.** *No portion of a building shall be nearer to the lot line than a distance equal to the height of that portion of the building, where the adjoining or nearest adjacent land is zoned single-family residential or is used solely for single-family detached residences, and in all other cases, not less than 50 feet from a lot line.*

The Hospital complies with all setback requirements. (Site Plan, Exhibit 4(b)).

- (4) **Off-street parking.** *Off-street parking shall be located so as to achieve a maximum of coordination between the proposed development and the surrounding uses and a maximum of safety, convenience and amenity for the residents of neighboring areas. Parking shall be limited to a minimum in the front yard. Subject to prior board approval, a hospital may charge a reasonable fee for the use of off-street parking. Green area shall be located so as to maximize landscaping features, screening for the residents of neighboring areas and to achieve a general effect of openness.*

The Hospital's off-street parking currently complies with these requirements. During construction of the expansion of the underground mechanical plant, approximately 52 existing employee parking spaces on-site will be temporarily unavailable. The Applicant has leased 100 off-site employee parking spaces (Parking and Landscaping Impact Statement, Exhibit 10).

- (5) **Commission recommendation.** *The board or the applicant shall request a recommendation from the commission with respect to a site plan,*

submitted by the applicant, achieving and conforming to the objectives and requirements of this subsection for off-street parking and green area.

- (6) **Building height limit.** *Building height limit, 145 feet.*

The Hospital buildings do not exceed 95 feet in height.

- (7) **Prerequisite.** *A resolution by the health services planning board approving the establishment of the hospital shall be filed with the petition for a special exception.*

A resolution by the Health Services Planning Board approving the establishment of the Hospital is on file with the Board of Appeals.

Therefore, based upon the foregoing, the Board GRANTS the Special Exception Modification for the above-described life safety and code related improvements, subject to the following conditions:

1. The Applicant is bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorneys, to the extent that such evidence and representations are identified in this opinion.

2. The Applicant shall install a noise control barrier on three sides of the cooling tower grid as depicted on Exhibit 26. The noise control barrier must be as high as the replacement cooling towers, at least 20 feet, and must include noise absorption treatments consisting of fiberglass panels of at least 2 inches in thickness.

3. Existing landscaping in the area above the underground mechanical plant that is disturbed during the construction of the expansion of the underground mechanical plant must be replanted after construction is completed.

4. An agreement for use of 100 off-site parking spaces must be in effect for the period of time during which on-site employee parking spaces are unavailable due to construction of the Life Safety and Code Improvements.

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Donald H. Spence, Jr., Chairman, Angelo M. Caputo and Mindy Pittell Hurwitz in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 19th day of September, 2001.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (Section 59-A-4.63 of the Zoning Ordinance). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.